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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

11 CODY LEAVITT,)
12 Petitioner,) 2:12-cv-00625-RLH-RJJ
13 vs.)
14 DWIGHT NEVEN, et al.,) ORDER
15 Respondents.) /

17 The petitioner has presented the Court with a motion for appointment of counsel (#3),
18 a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (received April 16, 2012) and two
19 applications to proceed *in forma pauperis* (#2 and #4).

20 The petitioner's application to proceed *in forma pauperis*, including the financial
21 certificate, establishes that the petitioner qualifies for *in forma pauperis* status. He shall be granted leave
22 to proceed *in forma pauperis*, and shall not be required to pay the filing fee for his habeas corpus
23 petition. The motion for appointment of counsel shall be denied at this time.

24 There is no constitutional right to appointed counsel for a federal habeas corpus
25 proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428
26 (9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d

1 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234
2 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities
3 of the case are such that denial of counsel would amount to a denial of due process, and where the
4 petitioner is a person of such limited education as to be incapable of fairly presenting his claims. See
5 *Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). The claims in
6 this case are not especially complex. Also, the Court notes from the petition and the other documents
7 that petitioner has submitted to the Court, that petitioner is able to present matters to the Court in an
8 organized and understandable manner. Petitioner's motion shall be denied.

9 A petition for federal habeas corpus should include all claims for relief of which
10 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred
11 from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions). If
12 petitioner is aware of any claim not included in his petition, he should notify the Court of that as soon
13 as possible, perhaps by means of a motion to amend his petition to add the claim.

14 **IT IS THEREFORE ORDERED** that petitioner's applications to proceed *in forma*
15 *pauperis* (#1 and #4) are **GRANTED**. Petitioner shall not be required to pay a filing fee to file his
16 habeas corpus petition.

17 **IT IS FURTHER ORDERED** that the motion for appointment of counsel (#3) is
18 **denied**.

19 **IT IS FURTHER ORDERED** that the Clerk shall **ELECTRONICALLY SERVE** the
20 petition (docket #1) upon the respondents.

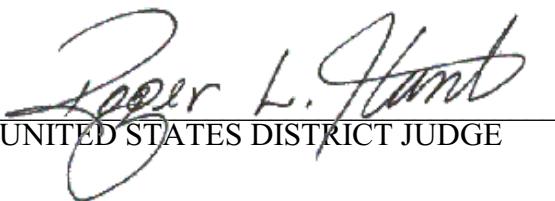
21 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from
22 entry of this order within which to answer, or otherwise respond to, the petition. In their answer or other
23 response, respondents shall address any claims presented by petitioner in his petition as well as any
24 claims presented by petitioner in any Statement of Additional Claims. Respondents shall raise all
25 potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and
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1 procedural default. **Successive motions to dismiss will not be entertained.** If an answer is filed,
2 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in the
3 United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have **forty-**
4 **five (45) days** from the date of service of the answer to file a reply.

5 **IT FURTHER IS ORDERED** that any state court record exhibits filed by respondents
6 herein shall be filed with a separate index of exhibits identifying the exhibits by number. The CM/ECF
7 attachments that are filed shall further be identified by the number or numbers of the exhibits in the
8 attachment. The hard copy of any additional state court record exhibits shall be forwarded – for this case
9 – to the staff attorneys in Reno.

10 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the Attorney
11 General of the State of Nevada a copy of every pleading, motion, or other document he submits for
12 consideration by the Court. Petitioner shall include with the original paper submitted for filing a
13 certificate stating the date that a true and correct copy of the document was mailed to the Attorney
14 General. The Court may disregard any paper that does not include a certificate of service. After
15 respondents appear in this action, petitioner shall make such service upon the particular Deputy Attorney
16 General assigned to the case.

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18 Dated this 15th day of May, 2012.

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21 UNITED STATES DISTRICT JUDGE
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